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OWEN D. JENSEN, Appellant)	
)	
and)	Docket No. 05-1787
)	Issued: January 13, 2006
U.S. POSTAL SERVICE, RALSTON POST)	
OFFICE, Omaha, NE, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On August 29, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 22, 2005, adjudicating his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant is entitled to a schedule award for his tinnitus condition.

On February 9, 2004 appellant, then a 57-year-old mail carrier, filed a traumatic injury claim alleging that he experienced pain and ringing in his ears when he heard a high-pitched squeal from the wheels of a rolling mail tub. On April 7, 2004 the Office accepted appellant's claim for right ear tinnitus. On April 29, 2004 appellant filed a claim for a schedule award.

In a March 4, 2004 report, Dr. Monty R. Sellon, an attending Board-certified family practitioner, stated that appellant was exposed to a high-pitched noise at work on February 9,

2004 and experienced severe ringing in his ears known as tinnitus. He indicated that testing revealed high frequency hearing loss in his ears “which is the most common reason one would suffer from this significant tinnitus.”

In a March 24, 2004 report, Dr. Britt A. Thedinger, an attending Board-certified otolaryngologist, noted that appellant had an extensive history of past noise exposure and indicated that audiometric studies revealed a bilateral mild to severe noise-induced sensorineural hearing loss. He also diagnosed right-sided tinnitus. Dr. Thedinger stated: “The tinnitus is a result of the loud noise exposure at work but his underlying sensorineural hearing loss predisposed him to this problem.” Dr. Thedinger indicated that he saw no long-term effects as a result of the February 9, 2004 noise exposure.

By decision dated August 19, 2004, the Office denied appellant’s claim for a schedule award for his tinnitus condition on the grounds that the medical evidence did not establish that his hearing loss was causally related to his employment and he was not entitled to a schedule award for a tinnitus condition unless the condition caused or contributed to a work-related ratable hearing loss.

Appellant requested reconsideration.

By decision dated July 22, 2005, the Office denied modification of the August 19, 2004 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as “permanent impairment.” 20 C.F.R. § 10.404 sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁴ Then, the “fence” of 25 decibels is

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* at 250 (5th ed. 2001).

⁴ *Id.*

deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The A.M.A., *Guides* allows for compensation of up to five percent for tinnitus "in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living."⁹ The Board has held that there is no basis for paying a schedule award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a permanent and ratable loss of hearing, under the Act's schedule award provisions.¹⁰

Dr. Sellon diagnosed tinnitus following appellant's exposure to a high-pitched noise at work on February 9, 2004. However, he indicated that appellant also had a high frequency hearing loss, which was the most common reason for a significant tinnitus condition such as appellant had. Thus, Dr. Sellon opined that appellant's hearing loss was the basis for the severity of his tinnitus condition, which was triggered by the February 9, 2004 noise exposure, not that his tinnitus caused or contributed to his hearing loss. Dr. Thedinger noted that appellant had an extensive history of past noise exposure and diagnosed a bilateral mild to severe noise-induced sensorineural hearing loss and right-sided tinnitus. He stated: "The tinnitus is a result of the loud noise exposure at work but his underlying sensorineural hearing loss predisposed him to this problem." Therefore, his opinion was that appellant's hearing loss was the underlying reason for the tinnitus condition, not that the tinnitus caused or contributed to his hearing loss. The medical evidence in this case does not establish that appellant's tinnitus condition caused or contributed to his loss of hearing. Consequently, appellant is not entitled to a schedule award for his tinnitus condition.

The A.M.A., *Guides* also allows an award for tinnitus under disturbances of vestibular function which affect equilibrium rather than hearing.¹¹ There is no allegation by appellant or

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB 301(2002); *petition for recon. granted* (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

⁹ A.M.A., *Guides*, 246; *Leslie M. Mahin*, 55 ECAB ____ (Docket No. 04-555, issued February 12, 2004).

¹⁰ *Donald A. Larson*, 41 ECAB 947 (1990); *Charles H. Potter*, 39 ECAB 645 (1988).

¹¹ A.M.A., *Guides*, 252; *Charles H. Potter*, *supra* note 10.

evidence in the record that the tinnitus condition has affected his equilibrium. Appellant has failed to meet his burden of proof to establish that his tinnitus condition caused or contributed to a ratable hearing loss or caused vestibular function disturbances. Therefore, there is no basis for granting appellant a schedule award for his tinnitus condition.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for his tinnitus condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2005 is affirmed.

Issued: January 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board